

**Ellis Funeral Homes, Inc. and Miscellaneous Drivers, Helpers and Public Employees Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.**  
Case 14-RC-9285

April 13, 1981

### DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a petition filed on October 15, 1980,<sup>1</sup> and a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on November 14, under the direction and supervision of the Regional Director for Region 14 among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately six eligible voters, six cast ballots, of which two were for and one was against the Petitioner, with three challenged ballots. The challenged ballots are sufficient in number to determine the results of the election.

In accordance with the Rules and Regulations of the National Labor Relations Board, the Regional Director conducted an investigation and issued and duly served on the parties his Report on Challenged Ballots with recommendations in which he recommended that the challenges to two ballots be sustained and the challenge to one ballot be overruled. Thereafter, the Petitioner filed a timely exception to the Regional Director's Report.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All office clerical employees including secretaries, clerk typists and receptionists employed by the Employer at its 1905 Union and 2820 Stoddard, St. Louis, Missouri, facilities, excluding all other employees, professional employees, guards and supervisors as defined in the Act.

<sup>1</sup> All dates are in 1980, unless otherwise indicated.

5. The Board has considered the Regional Director's report and the Petitioner's exception and supporting brief and hereby adopts the Regional Director's findings<sup>2</sup> and recommendations, to the extent consistent herewith.

The Regional Director's investigation disclosed that the Employer is a corporation engaged in the retail sale of funeral services. From 1973 to 1979, the Employer's stock totaling 20 shares was owned in its entirety by Fulton E. Culkin. Upon his demise in October 1979, Culkin bequeathed all of the stock to certain current employees. In this regard, President Robert Jones received 35 percent of the stock or 7 shares, Vice President Ted Foster and Secretary Treasurer Georgia Cobb each received 20 percent of the stock or 4 shares each, General Manager Rodney Ockleberry received 10 percent of the stock or 2 shares, and employees Vivian Cunningham, Odetta Riley, and Robert Smith each received 5 percent of the stock or 1 share each. The officers of the corporation are also members of the corporation's board of directors and, in this capacity, they determine all of the Employer's personnel policies regarding hiring, discharging, and disciplining of employees as well as wage rates and wage increases for employees.

The challenged voter, Sheila Cobb, is the daughter of Georgia Cobb, the secretary-treasurer of the corporation and a member of the three-member board of directors. Georgia Cobb is responsible for day-to-day supervision of the four clerical employees who comprise the collective-bargaining unit in this case. Additionally, she is the bookkeeper for the Employer and therefore responsible for all monetary transactions including the preparation and distribution of paychecks.

Sheila Cobb obtained employment with Ellis Funeral Home approximately 4 years ago. She has not resided with her mother at any time during her employment. Cobb currently works on a full-time basis as the assistant bookkeeper and is under the direct supervision of her mother, as are all clerical employees. Her duties include general clerical functions, including mailing bills to customers, posting accounts receivable and accounts payable, and preparing a monthly summary of accounts. She works in the same general vicinity as the other clerical employees.

When Sheila Cobb began her employment with the Employer, she earned \$125 per week and through yearly increases eligible to all employees, she now earns \$170 per week. (The other employees in the unit earn between \$140 and \$200 per

<sup>2</sup> In the absence of exceptions we adopt, *pro forma*, the Regional Director's recommendations that the challenges to the ballots of Vivian Cunningham and Odetta Riley be sustained.

week.) Cobb works the same hours and must follow the same procedure concerning absence, lateness, or taking time off as other employees included in the unit. She receives only those benefits and privileges offered other employees. On the basis of these facts, the Regional Director recommended that the challenge to Sheila Cobb's ballot be overruled. The Regional Director concluded that inasmuch as Sheila Cobb does not receive disproportionate wages to those of other unit employees, receives no special benefits or favored treatment, and has not resided with her mother at any time during her employment, the mere coincidence of the relationship to her mother as a member of management and minority shareholder does not warrant her exclusion from the unit. The Petitioner excepts to this finding, arguing, *inter alia*, that Sheila Cobb does not share a community of interest with bargaining unit employees by virtue of her special relationship to management as the daughter of a substantial shareholder and management official of the Employer. We find merit in this exception.

Under Section 9(b) of the Act, the Board has the responsibility to determine the unit appropriate for collective bargaining, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act . . . ." The Board has long found the best way to assure this freedom is to include in the unit only those employees who share a community of interest. In reviewing the facts before us here, we conclude that Sheila Cobb has a community of interest separate from that of her fellow employees and should be excluded from the unit on that basis.

We note that Georgia Cobb, mother of challenged voter Sheila Cobb, owns 20 percent of the Employer's stock, which in this case makes her the second largest shareholder of the Employer. She also serves on the three-member board of directors and, in this capacity, she participates in decisions setting management policy and deciding employee discipline and employee wages. Additionally, Georgia Cobb is the day-to-day, direct supervisor of all the clerical employees including her daughter. The combination of these factors, in conjunction with a bargaining unit of only four employees, makes it a virtual certainty that Sheila Cobb will get a more attentive and sensitive ear to her day-to-day and long range work concerns than other clerical employees.<sup>3</sup> While this accessibility to

management may not always result in easily identifiable special privileges or favorable working conditions, the fact that she has this peculiar access gives her a status and area of interest not shared by other clerical employees.

Consequently, for the foregoing reasons, we conclude that the interests of Sheila Cobb are more closely allied with those of management than with those of her fellow employees.<sup>4</sup> We shall sustain the challenges to her ballot and direct that it remain unopened and uncounted.

Accordingly, as the tally shows that the Petitioner has obtained a majority of the valid votes cast, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for Miscellaneous Drivers, Helpers and Public Employees Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

#### CHAIRMAN FANNING dissenting:

I do not agree that the challenged voter herein does not share a community of interest with bargaining unit employees. My colleagues find that as a result of a combination of factors, it is a virtual certainty, speculative though that may be, that the challenged voter will receive special attention. Those factors are: an unusually small bargaining unit; supervision of that bargaining unit by the

tors or a person responsible for day-to-day management of the employer's operations and the children were under the direct supervision of a nonrelative. The entire unit in that case had 42 employees. In *Weyerhaeuser*, the challenged voter's father was neither on the board of directors nor her direct supervisor and the unit consisted of 26 employees.

While Member Jenkins does not disagree with the distinctions drawn above between *Tops Club* and *Weyerhaeuser* and the present situation, he notes that he dissented in any event in both those cases from the majority's overruling the challenges to the ballots involved there. He notes further that, consistent with his dissent in *Toyota Midtown, Inc.*, 233 NLRB 797 (1977), he would find that Sheila Cobb is not an employee under the definition of "employee" set out at Sec. 2(3) of the Act. He would exclude her on this additional basis, also.

<sup>4</sup> See *N.L.R.B. v. Caravelle Wood Products Inc.*, 466 F.2d 675 (7th Cir. 1972), wherein the court indicated that the Board may, under a community-of-interest standard, exclude employees from the unit on the basis of a family relationship, provided appropriate factual findings support the Board's conclusions. Similarly, the court pointed out that under this test it was not necessary to prove that the employee in question received special job-related benefits.

<sup>3</sup> See *Parisoff Drive-In Market Inc.*, 201 NLRB 813, 814 (1973). In his report, the Regional Director cited *Tops Club, Inc.*, 238 NLRB 928 (1978), and *Weyerhaeuser Company, Soft Disposable Division*, 211 NLRB 1012 (1974), in overruling the challenge to Sheila Cobb's ballot. We find these decisions distinguishable. In *Tops Club, Inc.*, the Board found the challenged voters were not children of a member of the board of direc-

challenged voter's mother; the challenged voter's mother owns 20 percent of the employer's stock; and the challenged voter's mother serves on a three-member board of directors which makes decisions on management policy, employee discipline, and wages. But no special status has been shown.

In *Toyota Midtown, Inc.*, 233 NLRB 797 (1977), the Board included a challenged voter in a bargaining unit, with which he shared a community of interest. The bargaining unit was relatively small. The challenged voter's father was a major stockholder of the employer, who held the position of

corporate vice president and directly managed employees in the bargaining unit. Moreover, the challenged voter in *Toyota Midtown* lived apart from his relative. Likewise, the challenged voter in the instant case has lived apart from her mother during the entire employment period. Furthermore, her pay is not disproportionate to the wages of other employees in the unit, and she is subject to the same personnel procedure as the other employees.

I do not believe that the instant case is distinguishable from *Toyota Midtown*. Accordingly, I would order that the challenged ballot be counted.